

THE HON'BLE SRI JUSTICE N.V. RAMANA

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W.P. No. 23937 of 2005

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Order:

The petitioner was appointed as Manager in Andhra Pradesh Society for Training and Employment Promotion (hereinafter referred to as 'the Society') in the year 1991. While he was working as Chief Executive Officer in the Society at Warangal, the 2nd respondent, namely the Managing Director of the Society, vide proceedings dated 30.01.2001 placed him under suspension pending enquiry. On 09.06.2002, the 2nd respondent issued charge sheet to the petitioner and also initiated criminal proceedings against him. The petitioner claims that he submitted his interim explanation to the chargesheet on 12.11.2003, and that even before he could submit his full explanation, the 2nd respondent vide proceedings dated 29.08.2004, appointed the Deputy Director of Youth Services as Enquiry Officer and nominated one Accounts Officer as Presenting Officer. The petitioner claims that he submitted his explanation to the chargesheet on 25.09.2004. On the request of the petitioner, the 2nd respondent vide proceedings dated 11.04.2005, revoked the suspension of the petitioner and directed his reinstatement, pending finalization of enquiry. Pursuant to the said order, he was posted as Manager at Nellore and from there he was transferred to Karimnagar, and when he reported at Karimnagar, it is the case of the petitioner that the 2nd respondent issued the impugned proceedings dated 03.10.2006 placing him under suspension, pending finalization of the departmental proceedings.

The learned counsel for the petitioner submitted that the

2nd respondent has issued impugned proceedings, placing him under suspension, without application of his mind to the facts of the case and merely acted on the dictation of the 1st respondent. He submitted that the 2nd respondent by acting on the dictation of the 1st respondent has abdicated his power. He submitted that the

2nd respondent having revoked the suspension of the petitioner in the month of April, 2005, could not have within five months again placed him under suspension, by reason of the impugned order, and more so when no adverse fresh material was detected after April, 2005, which warranted the placing of the petitioner under suspension. He submitted that neither any public interest is involved in placing the petitioner under suspension nor there is any possibility of the petitioner tampering with the evidence or influencing the witnesses, and in such circumstances, placing the petitioner once again under suspension, is illegal and arbitrary, and more so when the guidelines issued by the Government obligate the authorities to review the continuation or otherwise of the suspension every six months. He thus prayed that the impugned order of suspension of the petitioner be set aside and the writ petition be allowed.

On 10.2.2005, this Court while ordering notice before admission, granted interim suspension of the impugned order. To vacate the said order, both the 1st and 2nd respondents filed vacate stay petitions in W.V.M.P. No. 1154 of 2006 and W.V.M.P. No. 3558 of 2005 along with counter-affidavits, which are more or less similar.

The learned Government Pleader for Tourism and Culture appearing on behalf of respondent No.1-Government and the learned Standing Counsel for respondent No.2-Society reiterating the counter-averments submitted that the District Collector, Sangareddy, Medak

District, vide his report dated 23.01.2001 reported that the petitioner while working as Manager of the society, indulged in grave administrative and financial irregularities, and based on the said report, the 2nd respondent vide orders dated 30.01.2001, placed the petitioner under suspension, pending enquiry. Thereafter, the 2nd respondent having framed charges, also initiated criminal proceedings against the petitioner. On the request of the petitioner, the Government vide Memo dated 04.04.2005 issued instructions to the 2nd respondent to revoke the suspension of the petitioner, and based on the said instructions, the 2nd respondent vide orders dated 11.04.2005, revoked the suspension of the petitioner. The Government having reviewed the case of the petitioner in the light of the Vigilance Commissions report, found that the petitioner indulged in misappropriation of government funds to the tune of Rs.1.30 crores, and accordingly they felt that reinstating the petitioner was not proper, and therefore, as per the Memo dated 21.09.2005 of the Government, which laid down the policy to deal strictly with officers involved in misappropriation, the 2nd respondent issued the impugned proceedings dated 03.10.2005, placing the petitioner again under suspension. They submitted that the service rules applicable to government employees are not applicable to the employees of the society, and they are governed by APSTEP Employees' Conduct, Discipline and Appeal Rules, 1992, and the petitioner being an employee of the society cannot contend that the continuance of his suspension, is required to be reviewed every six months as per the rules framed by the Government. They submitted that the enquiry initiated against the petitioner is pending, and during the course of enquiry conducted thus far, he has been provided the fullest opportunity to defend his case, and as such, he

cannot contend that the respondents are conducting the enquiry in breach of the principles of natural justice. He thus prayed that the writ petition be dismissed.

Heard the learned counsel for the petitioner, the learned Government Pleader for respondent No.1-Government and the learned Standing Counsel for respondent No.2-Society and also perused the entire file relating to the enquiry of the petitioner.

The law is well settled that suspension pending enquiry is not a punishment, but is made to facilitate a free, fair and impartial enquiry. The petitioner, admittedly, on the basis of the report dated 23.01.2001 of the District Collector, Sangareddy, Medak District, who reported that the petitioner indulged in administrative and financial irregularities, was placed under suspension pending enquiry, vide orders dated 30.01.2001 of the 2nd respondent. Thereafter, charges were framed and criminal prosecution launched against the petitioner. The petitioner submitted his explanation to the charges, but the 2nd respondent not satisfied with the same, appointed an Enquiry Officer to enquire into the charges levelled against the petitioner. While the enquiry was pending, the petitioner made a representation dated 07.10.2004, requesting the 1st respondent to revoke his suspension. Be that as it may, considering the request of the petitioner for revocation of his suspension, the 1st respondent vide orders dated 04.04.2005 ordered revocation of the suspension of the petitioner. In pursuance of the said orders, the 2nd respondent vide orders dated 27.04.2005, revoked the suspension of the petitioner. Before revocation of suspension of the petitioner, it appears from the record that the Vigilance Commission in one of its communication dated 27.01.2005 had observed as to why the

keenness shown to pursue reinstatement of the accused officer is not shown to conclude the disciplinary action against him. The suspension of the petitioner having been revoked, the Vigilance Commission, in its communication dated 06.06.2005 addressed to the Government, observed that the Department have deviated from the advice of the Vigilance Commissioner, the Department have to obtain orders in circulation to the Hon'ble Chief Minister through the Chief Secretary and Minister (Youth Services) duly following the procedure as laid down in Business Rules 32(1)(X), but the Department have obtained orders in circulation only to Minister (Youth Services. Observing so, the Vigilance Commission advised the Government to call for a meeting for reviewing the disciplinary action and for taking necessary steps to ensure expeditious completion of enquiry. Accordingly, the meeting was convened and the case of the petitioner was reviewed. The Government having reviewed the case of the petitioner, vide orders passed in Memo dated 21.09.2005, informed the 2nd respondent that they have decided to cancel the reinstatement orders of the petitioner and to continue the petitioner under suspension until further orders and requested to report compliance. Accordingly, the 2nd respondent placed the petitioner under suspension. After cancelling the revocation of orders of the petitioner and placing the petitioner under suspension, the Enquiry Officer submitted his report. The report of the Enquiry Officer was forwarded to the Vigilance Commission. The Vigilance Commission having perused the enquiry report, vide orders dated 14.09.2006 requested the Commissioner, Youth Services, to conduct enquiry afresh. In pursuance thereof, the 2nd respondent vide orders dated 11.12.2006 directed the Enquiry Officer to conduct enquiry afresh. The Enquiry Officer, it appears from the record, has issued notice dated 31.01.2007, calling upon the

petitioner to appear for the enquiry.

Though the learned counsel for the petitioner contends that the 2nd respondent by issuing the impugned orders, cancelling the orders of reinstatement of the petitioner into service and placing him under suspension once again, has acted to the dictation of the 1st respondent, the fact remains, earlier on the representation made by the petitioner seeking revocation of his suspension, to the dictation of the very same 1st respondent, the 2nd respondent had revoked the suspension order of the petitioner and reinstated him into service. Thus, it is clear that the revocation of the suspension of the petitioner as well as placing him under suspension once again, were done by the 2nd respondent on the directions of the

1st respondent. Be that as it may, what prompted the

1st respondent to review the case of the petitioner once again, is the letter dated 06.06.2005 of the Vigilance Commissioner, wherein he had informed the Government that the orders of reinstatement of the petitioner were made in violation of the procedure laid down in Business Rules 32(1)(X), which required circulation of the file to the Hon'ble Chief Minister through the Chief Secretary and Minister (Youth Services), and inasmuch as orders of reinstatement were passed only by obtaining orders in circulation to the Minister (Youth Services), the Vigilance Commissioner advised the Government to call for a meeting with the 2nd respondent and review the matter relating to disciplinary action and take necessary steps. It is this communication of the Vigilance Commissioner to call for a meeting with the 2nd respondent to consider the case of the petitioner. In the meeting, the Government found that the orders of reinstatement of the petitioner were passed without obtaining orders in circulation to the Hon'ble Chief Minister

through the Chief Secretary, and as the procedure adopted in the revocation of the suspension of the petitioner, was made in violation of the Business Rules 32(1)(X), the Government have decided to cancel the reinstatement orders and place the petitioner under suspension, and accordingly directed the 2nd respondent to cancel the revocation order and place the petitioner under suspension. Accordingly, on the directions of the 1st respondent, the 2nd respondent cancelling the orders of reinstatement and placed the petitioner under suspension once again. Since the petitioner, earlier was reinstated into service by the 2nd respondent on the dictation of the 1st respondent, he now cannot be allowed to contend that the 2nd respondent had by acting on the dictation of the 1st respondent, abdicated his power to the 1st respondent, and that he had passed the impugned order cancelling the order of revocation of his suspension without application of his mind.

The contention of the petitioner that as per the orders of the Government, the 2nd respondent is required to review the continuance of suspension every six months, cannot be accepted because, it is the specific case of the 2nd respondent that the Government have clarified that service rules applicable to government employees are not applicable to the employees of the society, and that the employees of the society are governed by APSTEP Employees' Conduct, Discipline and Appeal Rules, 1992. The petitioner being an employee of the society, therefore, cannot contend that the rules applicable to government employees are applicable to the employees of the society also, and that the continuation of his suspension, has to be reviewed every six months, and more so when the Government is said to have clarified on that aspect.

Be that as it may, the petitioner was placed under suspension

on 30.01.2001. His suspension was revoked and he was reinstated into service on 11.04.2005. After five months, he was again placed under suspension on 03.10.2005 by the 2nd respondent. Though the enquiry against the petitioner was concluded and the Enquiry Officer submitted his report, the fact remains, the Vigilance Commission, upon perusing the report of the Enquiry Officer, vide orders dated 23.08.2006, advised the Commissioner, Youth Services to conduct enquiry afresh. In pursuance of the said order, the 2nd respondent directed the Enquiry Officer to conduct enquiry afresh. The Enquiry Officer, as stated above, has also issued notice dated 31.01.2007, calling upon the petitioner to appear for the enquiry. The de novo enquiry ordered against the petitioner is pending, and is said to be in progress. The charges levelled against the petitioner are serious in nature, in that they relate to administrative and financial irregularities. Given the nature of charges alleged against the petitioner, and having regard to the fact that de novo enquiry ordered against the petitioner is in progress, I am of the considered opinion that it would not be appropriate to interfere with the impugned order, which cancelled the order of reinstatement of the petitioner and again placed him under suspension. However, having regard to the fact that the petitioner has been under suspension since a long time, I am of the considered opinion that the ends of justice would be met, if a direction is given to the respondents to expedite and complete the *de novo* enquiry proceedings initiated against the petitioner.

For the foregoing reasons, there is no merit in the writ petition, and the same is accordingly dismissed. However, the 2nd respondent is directed to expedite the *de novo* enquiry proceedings initiated against the petitioner in pursuance of the orders of the Vigilance Commission, and complete the same as expeditiously

as possible, preferably within a period of two months from the date of receipt of a copy of this order. The petitioner shall cooperate in the completion of the enquiry proceedings. No costs.

N.V. RAMANA, J.

Dated: 19th April, 2007.
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